



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,508	01/15/2004	DayNa M. Decker	306956US26 CIP	7063
22850	7590	03/06/2008	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			PRICE, CARL D	
			ART UNIT	PAPER NUMBER
			3749	
			NOTIFICATION DATE	DELIVERY MODE
			03/06/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/759,508	<b>Applicant(s)</b> DECKER, DAYNA M.	
	<b>Examiner</b> CARL D. PRICE	<b>Art Unit</b> 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17/17/2006; 11/05/2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 158-263 is/are pending in the application.
- 4a) Of the above claim(s) 263 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 158-262 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/17/2007</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### Election/Restrictions

Applicant's election without traverse of Group I: Claims **158-262** in the reply filed on **11/05/2007** is acknowledged.

Claim **263** is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on **11/05/2007**.

### Response to Arguments

Applicant's arguments with respect to claims **158-263** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on **07/17/2007**, applicant has amended the claims to include at least the following:

Previously pending claims 1-70, 72, 75-87, 89-94, 96-99, 101-117, 119, 120 and 122-124 were cancelled.

Claims 1-157 (Cancelled)

New claims **158-263** were presented.

Claim 158 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising a wood selected from hardwoods; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; the thickness dimension of the wick is from 0.019 to 0.028 inches; the wick comprises substantially straight grains aligned substantially in the height dimension;

Art Unit: 3749

the wood has a moisture content of from 10 to 12 percent; and  
the wick provides an acoustic crackling sound when burned.

Claim 159 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and  
a rigid, planar wick provided in the body, the wick comprising a wood selected from  
the group consisting of poplar, cherry, maple, wenge, oak, rosewood and bamboo;  
wherein: the wick has a height dimension, a width dimension, and a thickness  
dimension;  
the height dimension is greater than the width dimension;  
the width dimension is greater than the thickness dimension; and the wick provides an  
acoustic crackling sound when burned.

Claim 179 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and  
a rigid, planar wick provided in the body, the wick comprising a wood having a  
moisture content of from 10 to 12 percent; wherein: the wick has a height dimension, a  
width dimension, and a thickness dimension; the height dimension is greater than the  
width dimension; the width dimension is greater than the thickness dimension; and. the  
wick provides an acoustic crackling sound when burned.

Claim 199 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar  
wick provided in the body, the wick comprising a material selected from the group  
consisting of wood, wood product, a semi-wood composition, and a wood- like material;  
wherein: the wick has a height dimension, a width dimension, and a thickness  
dimension; the height dimension is greater than the width dimension; the width  
dimension is greater than the thickness dimension;  
the wick comprises substantially straight grains aligned substantially in the height  
dimension; and  
the wick provides an acoustic crackling sound when burned.

Claim 220 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar  
wick provided in the body, the wick comprising a material selected from the group  
consisting of wood, wood product, a semi-wood composition, and a wood- like material;  
wherein: the wick has a height dimension, a width dimension, and a thickness dimension;  
the height dimension is greater than the width dimension; the width dimension is greater  
than the thickness dimension; the thickness dimension of the wick is from 0.019 to 0.028  
inches; and the wick provides an acoustic crackling sound when burned.

Art Unit: 3749

Claim 241 (New):

A candle or candle apparatus, comprising: a body of a meltable fuel; and a rigid, planar wick provided in the body, the wick comprising two sheets of a material selected from the group consisting of wood, wood product, a semi-wood composition, and a wood-like material; wherein: the wick has a height dimension, a width dimension, and a thickness dimension; the height dimension is greater than the width dimension; the width dimension is greater than the thickness dimension; and a fiat piece of cotton is sandwiched between the two sheets.

While applicants concede that Ebeling appears to disclose an outdoor candle including a wick made of wooden material impregnated with a combustible material. See Ebeling\*, pages 4 to 5.

Applicant argues that:

- "... Ebeling provides no disclosure whatsoever with respect to particular features of the wick. Claim 158 requires very particular wick features. For example, the wick must be formed from hardwood, must have a thickness of from 0.019 to 0.028 inches, must include substantially straight grains aligned substantially in the height dimension, must have moisture content of from 10 to 12 percent, and must provide an acoustic crackling sound when burned. Ebeling does not suggest selecting for these parameters, much less selecting the particular recited values within those parameters."

In response to applicant's arguments against the references of Ebeling individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). That is, the combination of teachings available at the time of the invention and presented in the prior art references of SE9903818 (Ebeling) (English language translation provided), US006017373 (Frisch) and FIREWOOD FOR YOUR FIREPLACE by Warren Donnelly (herein after referred to as Donnelly) suggest the desirability of audible crackling noises in firewood. The wick of SE9903818 (Ebeling) being made of wood would therefore predictably benefit from a selected amount of moisture added to the burning wooden wick material. at least for the reasons presented in **Donnelly** which taught, at the time of the invention, that it was known to select a given type of wood for the purpose of intentionally creating a "crackling fire" (see page 18, line 5) when burned, according to the preference of the person to, for example, create a "cheerful atmosphere,

Art Unit: 3749

to attract friends for a cozy evening” (page 17, last line). And, for the reasons and by the means taught by **Donnelly**. Namely, that “**Almost any wood will pop and throw sparks**” due to rupturing of wood cells resulting from “**water in the wood being changed to steam as the wood is heated**” and “from pitch, resin, and oils contained in the wood” (page 34, line 3- page 35, line 3). Indeed, according to **Donnelly’s** acknowledgment that the degree a given wood species produces “sparks”, necessarily accompanied by a “loud pop” as wood cells rupture, is known (page 85, last full paragraph). And, noting that **Donnelly** provides a “Table of Firewood” wherein “The different burning characteristics of each wood are listed so you should make your selection according to the type of fire you desire: ease of starting, high heat, fragrance, sparks, smoke, coaling qualities, etc.” (pages 88-95). The examiner therefore maintains that for at least the purpose of duplicating the ascetically pleasing audible snapping or popping sound of a natural wood fire, to create a “cheerful atmosphere”, it would have been obvious to a person having ordinary skill in the art to form the wood wick material of **SE9903818 (Ebeling)** from a wood product having characteristics known to produce a desired level of audible crackling, snapping or popping sounds such as due to a desired level of moisture therein (e.g. – from water, pitch, resin, oils, etc.), in view of the teaching of **US006017373 (Frisch)** and **Donnelly**. As long as some motivation or suggestion to combine the references is provided by the prior art taken as a whole, the law does not require that the references be combined for the reasons contemplated by the inventor. See *In re Beattie*, 974 F.2d 1309, 24 USPQ2d 1040 (Fed. Cir. 1992); *In re Kronig*, 539 F.2d 1300, 190 USPQ 425 (CCPA 1976) and *In re Wilder*, 429 F.2d 447, 166 USPQ 545 (CCPA 1970). Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one

Art Unit: 3749

known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Furthermore, with regard to the examiner's position the values recited in the claims from among those parameters constitutes a mere design choice (Office Action, pages 7 to 8), applicant submits that:

- "... the present specification demonstrates that selecting, for example, the particular wood species, wick thicknesses, grain alignments, and moisture contents, as recited in the present claims provides an unexpected effect. Because the features of the present claims provide desirable properties, such as a crackling sound, even burn rate, low suit emissions, safe flame burn height, and stability of the wick during the burn, and even consumption of fuel, while other combinations of features do not, it cannot be mere design choice to provide the claimed combination of features. See, e.g., present specification, paragraph [0070]."

The examiner acknowledges that under some circumstances, changes in a particular range of material may impart patentability if the particular ranges claimed produce a new and unexpected result which is different in kind and not merely in degree from the results of the prior art. In re Dreyfus, 22 CCPA (Patents) 830, 73 F.2d 931, 24 USPQ 52; In re Waite et al., 35 CCPA (Patents) 1117, 168 F.2d 104, 77 USPQ 586. Such ranges are termed "critical" ranges, and the applicant has the burden of proving such criticality. In re Swenson et al., 30 CCPA (Patents) 809, 132 F.2d 1020, 56 USPQ 372; In re Scherl, 33 CCPA (Patents) 1193, 156 F.2d 72, 70 USPQ 204. However, even though applicant's modification results in great improvement and utility over the prior art, it may still not be patentable if the modification was within the capabilities of one skilled in the art. In re Sola, 22 CCPA (Patents) 1313, 77 F.2d 627, 25 USPQ 433; In re Normann et al., 32 CCPA (Patents) 1248, 150 F.2d 627, 66 USPQ 308; In re Irmischer, 32 CCPA (Patents) 1259, 150 F.2d 705, 66 USPQ 314. More particularly, where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. In re Swain et al., 33 CCPA (Patents) 1250, 156 F.2d 239, 70 USPQ 412; Minnesota Mining and Mfg. Co. v. Coe, 69 App. D.C. 217, 99 F.2d 986, 38 USPQ 213; Allen et al. v. Coe, 77 App. D.C. 324, 135 F.2d 11, 57 USPQ 136. In this regard the examiner maintains that design parameters such as the relative dimensions of a wooden wick and fuel body, the wick size and dimensions, number and shape of the wick(s),

Art Unit: 3749

would necessarily depend on numerous interrelated design concerns such as a desired level or volume of audible sound or noise, a desired amount of light to be produced, particular fuel characteristics, a particular a desired overall size and shape of a given candle article, etc. to form the candle of **SE9903818 (Ebeling)** in the manner set forth in the claims can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

Applicant further asserts that:

- Frisch and Donnelly do not remedy the deficiencies of Ebeling. Frisch discloses an artificial log including materials used to create a crackling sound. See, e.g., Frisch, column 2, lines 57 to 59.
- Donnelly discloses that wood logs often pop when burning. See, e.g., Donnelly, page 18.
  - While these references may suggest the general desirability of crackling noises in firewood, the references do not remotely suggest that crackling noises are desirable in candle wicks.

Whether, or not, Frisch and Donnelly suggest that crackling noises are desirable in candle wicks it is noted that when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product is not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show it was obvious under 35 U.S.C. 103.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1396 (2007). Therefore, it would have been obvious to try a brazing technique in order to join to metal pieces together.

Applicant further asserts that:

- These references provide no guidance regarding how to elicit such desirable noises from a candle wick, which has a dramatically different structure and burns by an entirely different mechanism.



Art Unit: 3749

- Only the present specification would have led one of ordinary skill in the art from the combined teachings of Ebeling, Frisch and Donnelly to the candle of claim 158.
- As discussed in the present specification, particular types of wood, cut in a very precise way, along with characteristics of those types of wood can be combined to achieve the desirable attributes of the present invention. See present specification, paragraphs [0070], [0071].
- Neither every type of wood nor every configuration of such wood will produce the desired result. The cited references fail to disclose the particular combination of features of claim 158 or recognize the desirable, synergistic effect resulting therefrom.

In response to applicant's arguments against the references of Frisch and Donnelly individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Claims **157-262** are not patentable for the reasons set forth herein above and for the reasons set forth in the following examiner's action.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims Rejected under 35 U.S.C. 103(a)**

Claims **157-240** are rejected under 35 U.S.C. 103(a) as being unpatentable over **SE9903818 (Ebeling)** (English language translation provided) in view of **US006017373 (Frisch)**

Art Unit: 3749

and **FIREWOOD FOR YOUR FIREPLACE** by Warren Donnelly (herein after referred to as **Donnelly**), and supported in part by **US000383822 (Munger)**, **US0059839** and **Ladd (US00197902)**.

**SE9903818 (Ebeling)** shows and discloses (see the attached English language translation) a candle including:

- a body of meltable fuel; and
- a thin flat (figure 1) elongate wood or wood product wick (see the attached English language translation) disposed in the body and having an upper end extending above an upper surface of the body; and the body of the meltable fuel further comprises a gum or a resin, whereby when the wick is burned and consumes the meltable fuel;
- the upper end of the wick protruding from the candle substance; and
- the glue (10) receiving the thin flat wick forms, when solidified, a wick holder in a base of the body, the wick holder having an elongate slot in which a lower end of the wick is received.

The English language translation of the **SE9903818 (Ebeling)** discloses the following:

**“State of the art**

Outdoor candles of the conventional art are made, on the one hand, of some form of combustible candle substance that can be molded: for example, a candle material consisting of paraffin, stearin, and/or tallow; ...”

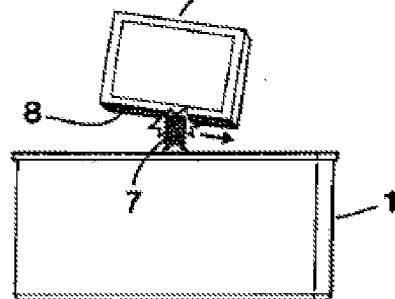
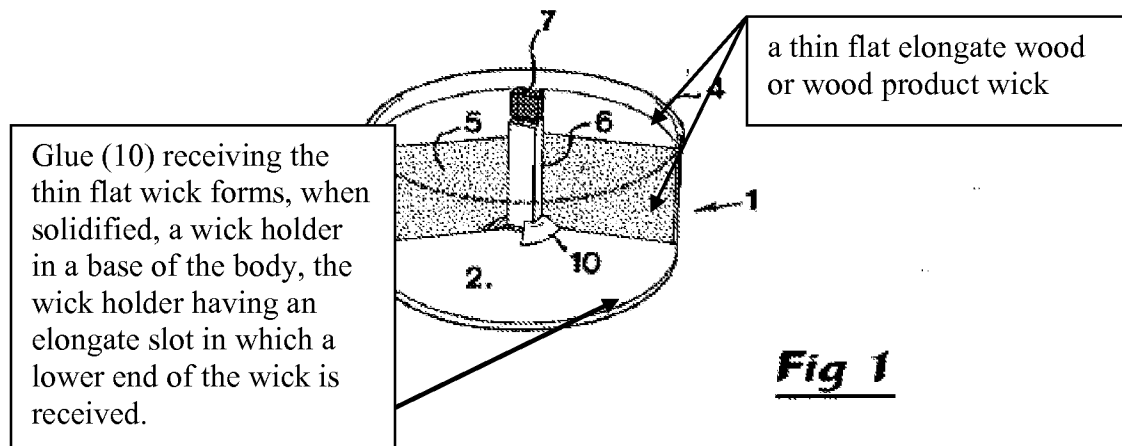
**“Detailed Description of a preferred embodiment of the invention**

In the drawing, Figure 1 shows a general view of cup or tin, which, in the usual manner, is comprised of a flat bottom 2 and a continuous cylindrical wall 3, which is open at the top, above its upper rim 4. A candle substance or other combustible substance 5 of a suitable composition has been poured into the cup. In the center of this substance 5, a wick 6 is anchored -- in accordance with present invention -- with the upper end of the wick protruding from the candle substance, and which has a head that can be ignited by scraping something against it 7. This ignitable head can be made of various materials (for example sulfur), which have the common characteristic that they can be ignited when an igniting body is scraped against the ignitable head. Figure 2 illustrates how a striking surface 8 of a conventional matchbox 9 can be used to light the ignitable head of the wick. ...

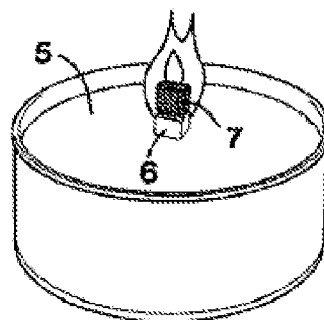
The actual wick 6 can advantageously be made of a material that retains its shape, for example some kind of wooden material, which is impregnated with a combustible material, after which the ignitable head 7 is applied to the top of the wick. The outdoor candle is made in the conventional way with the wick being placed in the center of the bottom of the cup 2 and fixed in that position, for example, by using a daub of glue 10 ...”

(Highlighting and Underlining Added)

**SE9903818 (Ebeling)** shows and discloses the invention substantially as set forth in the claims with possible exception to apparatus creates pleasant crackling sounds.



**Fig 2**



**Fig 3**

**US006017373 (Frisch)** teaches, from applicant's same combustible flame producing field of endeavor, snapping and popping of burning wood arises from heating of moisture and

Art Unit: 3749

sap which naturally exist in the log. **US006017373 (Frisch)** also teaches that it is known and desirable duplicate the sound of burning natural logs in artificial burning flame producing article or apparatus, for the purpose of providing an ascetically pleasing sound from the artificial article.

**US006017373 (Frisch)** teaches the following:

(7) Typical prior art artificial logs burn much more quietly than natural logs and do not duplicate the roar of burning natural logs. Also, as discussed below, natural logs exhibit loud snapping and popping, the snapping and popping arising from heating of moisture and sap which naturally exist in the log.  
(Highlighting and Underlining Added)

**Donnelly** teaches from applicant's same the wood fire field of endeavor, that it is well known to select a given type of wood for the purpose of intentionally creating a "crackling fire" (see page 18, line 5) when burned, according to the preference of the person to, for example, create a "cheerful atmosphere, to attract friends for a cozy evening" (page 17, last line).

**Donnelly** also teaches that "Almost any wood will pop and throw sparks" due to rupturing of wood cells resulting from "water in the wood being changed to steam as the wood is heated" and "from pitch, resin, and oils contained in the wood" (page 34, line 3- page 35, line 3). **Donnelly** further discloses and teaches that the degree that a given wood species produces "sparks", necessarily accompanied by a "loud pop" as wood cells rupture, is known (page 85, last full paragraph). In this regard **Donnelly** provides a "Table of Firewood" wherein "The different burning characteristics of each wood are listed so you should make your selection according to the type of fire you desire: ease of starting, high heat, fragrance, sparks, smoke, coaling qualities, etc." (pages 88-95).

In regard to claims **157-240**, for at least the purpose of duplicating the ascetically pleasing audible snapping or popping sound of a natural wood fire, to create a "cheerful atmosphere", it would have been obvious to a person having ordinary skill in the art to form the wood wick material of **SE9903818 (Ebeling)** from a wood product known to produce a desired level of audible crackling, snapping or popping sounds such as due to a desired level of moisture therein (e.g. – from water, pitch, resin, oils, etc.), in view of the teaching of **US006017373 (Frisch)** and **Donnelly**.

In regard to claims such as **157-240**, since the wood specie (e.g. – fruit wood, hardwood), relative dimensions of the wick and fuel body, the wick size, number and shape of the wick(s), would necessarily depend on numerous interrelated design concerns such as a rate of burn, desired level or volume of audible sound or noise, a desired amount of light to be produced, particular fuel characteristics, the size and shape of a given candle article, etc. to form the wooden wick of the **SE9903818 (Ebeling)** candle in the manner set forth in the claims can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

In regard to claims **171, 191** and **234**, for example, wood grain is known to be generally straight (**See US000383822 (Munger)**).

In regard to claims **167, 170, 189, 209, 210, 230** and **231**, for example, Official Notice is taken that it is well known to form burner wicks from a wood product of pressed wood particle/powder product or a high density fiberboard material (see **US0059839** and **Ladd (US00197902)** and adhesive in the pressed wood and wherein the adhesive is an added resin, gum, or natural glue (see **US00431033**). As such, in view of that which is well known and for the known purpose, it would have been obvious to a person having ordinary skill in the art to form the candle in the manner set forth in the claims.

In regard to claims such as **165, 185, 205** and **226**, for example, Official Notice is taken that it is well known to provide candle fuel, and therefore the embedded wick, with scented oil for the purpose of producing a desired fragrance (see **Fredricks (3,175,876)**). Furthermore, Official notice is taken that all woods include naturally occurring dyes producing a characteristic color of the wood, and oils which when burned necessarily produce a fragrance.

In regard to claims **176, 196, 217** and **238**, for example, the wood wick of **SE9903818 (Ebeling)** will necessarily be sealed or coated with wax, as it is located with a solidified body of wax type fuel.

In regard to claims such as **178, 198** and **219**, for example, since bleaching, dyeing and apply printed images to the wick do not affect the operational characteristic of the wick and amount to nothing more than merely an ascetic effect, these limitation can be given no patentable weight..

Art Unit: 3749

In regard to claims such as, **157-240**, since the selection of the wood would necessarily depend on numerous design concerns such as a desired rate of burn, the desired amount or volume of audible noise (e.g. - crackling, snapping and popping) of the burning wood, etc., to select any one of Prunes Serotina, Hardwood, Softwood, Cherry, Poplar, Maple, Birch, Beech, Basswood, Aspen, Yellow, Buckeye, Oak, cellulose and lignin, Cedar, Spruce, Cypress, Pine, Pacific Yew, Silverbell, Witch Hazel, Tropical Wood, Rimo, Pillarwood, Wenge, Rosewood or Bamboo, etc. can be viewed as nothing more than merely a matter of choice in design absent the showing of any new or unexpected results produced therefrom over the prior art of record.

In regard to claims such as **160, 162, 164, 180, 182, 200, 202, 221, and 223**, for example, Official Notice is taken that it is known to make candle from meltable fuel(s) including petroleum (paraffin), mineral (montan), synthetic wax, clear candle waxes, or "gels", beeswax, carnauba, candelillia or vegetable-based wax, including stearic acids, UV inhibitors, polyethylene, scent oils, or color pigments, a vegetable-based wax including palm and soy, cotton, olive, linseed, castor, peanut and jojoba. As such in view of that which is well known and for the known purpose it would have been obvious to a person having ordinary skill in the art to form the candle in the manner set forth in the claims.

**Allowable Subject Matter**

Claim **240-262** allowed.

.

**Conclusion**

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

**THIS ACTION IS MADE FINAL.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### **USPTO CUSTOMER CONTACT INFORMATION**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARL D. PRICE whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:0am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/CARL D. PRICE/

Primary Examiner, Art Unit 3749